

**James Madison to Edmund Randolph, April 8, 1787.
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TO EDMUND RANDOLPH.¹

1 From the Madison Papers (1840).

New York, April 8, 1787.

Dear Sir, —Your two favors of the twenty-second and twenty-seventh of March, have been received since my last. In a preceding one you ask, what tribunal is to take cognizance of Clark's offence? If our own laws will not reach it, I see no possibility of punishing it. But will it not come within the act of the last session concerning treasons and *other offences* committed without the commonwealth? I have had no opportunity yet of consulting Mr. Otto on the allegation of Oster touching the marriage of French subjects in America. What is the *conspicuous prosecution* which you suspect will shortly display a notable instance of perjury?

I am glad to find that you are turning your thoughts towards the business of May next. My despair of your finding the necessary leisure, as signified in one of your letters, with the probability that some leading propositions at least would be expected from Virginia, had engaged me in a closer attention to the subject than I should otherwise have given. I will just hint the ideas that have occurred, leaving explanations for our interview.

I think with you, that it will be well to retain as much as possible of the old Confederation, though I doubt whether it may not be best to work the valuable articles into the new

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system, instead of engrafting the latter on the former. I am also perfectly of your opinion, that, in framing a system, no material sacrifices ought to be made to local or temporary prejudices. An explanatory address must of necessity accompany the result of the Convention on the main object. I am not sure that it will be practicable to present the several parts of the reform in so detached a manner to the States, as that a partial adoption will be binding. Particular States may view different articles as conditions of each other, and would only ratify them as such. Others might ratify them as independent propositions. The consequence would be that the ratifications of both would go for nothing. I have not, however, examined this point thoroughly. In truth, my ideas of a reform strike so deeply at the old Confederation, and lead to such a systematic change, that they scarcely admit of the expedient.

I hold it for a fundamental point, that an individual independence of the States is utterly irreconcilable with the idea of an aggregate sovereignty. I think, at the same time, that a consolidation of the States into one simple republic is not less unattainable than it would be inexpedient. Let it be tried, then, whether any middle ground can be taken, which will at once support a due

supremacy of the national authority, and leave in force the local authorities so far as they can be subordinately useful.

The first step to be taken is, I think, a change in the principle of representation. According to the present form of the Union, an equality of suffrage, if not just towards the larger members of it, is at least safe to them, as the liberty they exercise of rejecting or executing the acts of Congress, is uncontrollable by the nominal sovereignty of Congress. Under a system which would operate without the intervention of the States, the case would be materially altered. A vote from Delaware would have the same effect as one from Massachusetts or Virginia.

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Let the national Government be armed with a positive and complete authority in all cases where uniform measures are necessary, as in trade, &c., &c. Let it also retain the powers which it now possesses.

Let it have a negative, in all cases whatsoever, on the Legislative acts of the States, as the King of Great Britain heretofore had. This I conceive to be essential and the least possible abridgement of the State sovereignties. Without such a defensive power, every positive power that can be given on paper will be unavailing. It will also give internal stability to the States. There has been no moment since the peace at which the Federal assent would have been given to paper-money, &c., &c.

Let this national supremacy be extended also to the Judiciary department. If the Judges in the last resort depend on the States, and are bound by their oaths to them and not to the Union, the intention of the law and the interests of the nation may be defeated by the obsequiousness of the tribunals to the policy or prejudices of the States. It seems at least essential that an appeal should lie to some national tribunals in all cases which concern foreigners, or inhabitants of other States. The admiralty jurisdiction may be fully submitted to the National Government.

A Government formed of such extensive powers ought to be well organized. The Legislative department may be divided into two branches. One of them to be chosen every — years by the Legislatures or the people at large; the other to consist of a more select number, holding their appointments for a longer term, and going out in rotation. Perhaps the negative on the State laws may be most conveniently lodged in this branch. A Council of Revision may be superadded, including the great ministerial officers.

A national Executive will also be necessary. I have scarcely ventured to form my own opinion yet, either of the manner in which it ought to be constituted, or of the authorities with which it ought to be clothed.

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An article ought to be inserted expressly guaranteeing the tranquillity of the States against internal as well as external dangers.

To give the new system its proper energy, it will be desirable to have it ratified by the authority of the people, and not merely by that of the Legislatures.

I am afraid you will think this project, if not extravagant, absolutely unattainable and unworthy of being attempted. Conceiving it myself to go no further than is essential, the objections drawn from this source are to be laid aside. I flatter myself, however, that they may be less formidable on trial than in contemplation. The change in the principle of representation will be relished by a majority of the States, and those too of most influence. The northern States will be reconciled to it by the *actual* superiority of their populousness; the Southern by their *expected* superiority on this point. This principle established, the repugnance of the large States to part with power will in a great degree subside, and the smaller States must ultimately yield to the predominant will. It is also already seen by many, and must by degrees be seen by all, that, unless the Union be organized efficiently on republican principles, innovations of a much more objectionable form may be obtruded, or, in the most favorable event, the partition of the Empire, into rival and hostile confederacies will ensue.